

A. G. Contract No. KR97 0903TRN
ADOT ECS File: JPA 97-56
Project: STP-000-6(116)P
TRACS: SR116 01C
Section: Van Winkle-New St. @ AERR
AAR/DOT No. 742-373-X

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
GILA COUNTY, ARIZONA

THIS AGREEMENT is entered into 17 April, 1997,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-
954, as amended, between the STATE OF ARIZONA, acting by and
through its DEPARTMENT OF TRANSPORTATION (the "State") and GILA
COUNTY, ARIZONA acting by and through its BOARD OF SUPERVISORS
(the "County").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes
Section 28-108 and 28-112 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has delegated
to the undersigned the authority to execute this agreement on
behalf of the State.

2. The County is empowered by Arizona Revised Statutes
Section 11-251 to enter into this agreement and has by
resolution, a copy of which is attached hereto and made a part
hereof, resolved to enter into this agreement and has authorized
the undersigned to execute this agreement on behalf of the
County.

3. The Arizona Corporation Commission is empowered by
Arizona Revised Statutes Section 40-337 to participate in the
funding of this project, and has authorized funds for this
project.

4. Congress has authorized appropriations for the erection
of automatic warning signals, automatic gate arms, plank
crossings, pavement markings, and other appurtenances.

NO. 22320
Filed with the Secretary of State
Date Filed: 04/17/98

Betty Gayles
Secretary of State

By Dick Haenewald

5. Such project within the boundary of the County has been selected by the County; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration ("FHWA") for its approval.

6. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the County by reason of federal law and regulations under which funds for the project are authorized to be expended.

7. The work embraced in this agreement and the estimated cost are as follows: Upgrade Railroad Crossing.

Preliminary and Construction Engineering	\$ 6,000.00
Furnish and Install Flashing Lights and Automatic Gates (by railroad forces)	\$ 102,328.00
Total Protection Work	\$ 108,328.00
Install Concrete Crossing Surface (by railroad forces)	\$ 46,542.00
Total Project	\$ 154,870.00
Federal Aid Funds @ 94.3% of 154,870.00	\$ 146,042.00
AZ Corp. Comm. Funds @ 5.7% of \$108,328.00	\$ 6,175.00
Gila County Funds @ 5.7% of \$46,542.00	\$ 2,653.00

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will authorize the Railroad Company to proceed with the work covered by the State-Railroad Agreement and will request the maximum federal funds available.

b. Should some unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the County's deposit unless and until so authorized in writing by the County.

2. The County shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been or will be acquired.

3. Once acquired, the County shall remove from the County right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been or will be removed therefrom.

4. The County shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the County right of way. In the event of any unauthorized encroachment or improper use, the County shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the County.

5. Upon completion of construction, the County shall provide for, at its own cost and as an annual item in its budget, proper maintenance; such maintenance (exclusive of maintenance by the Railroad Company of its facilities) to include, but not be limited to, traffic signals, signs, islands, curbs and markings necessary for the purpose of regulating, warning and guiding traffic.

6. The County shall mark and sign railway-highway grade crossings in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways, within 45 days after the railroad has completed its work; failing that, the State may proceed with the marking and signing thereof, the cost of which shall be borne by the County.

7. By such regulation as it may by ordinance provide, the County shall regulate parking and not permit vehicles to be left on the street in any manner other than at and parallel with the curb and to restrict parking so as to prevent conflicts with moving traffic.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement, nor for any resulting construction project. The County, in regard to the County's relationship with the State only, assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost over-runs and construction claims. Such assumption of the responsibility by the County for the benefit of the State in no way acts as a waiver by the County for the benefit of the railroad company or any responsibility the railroad company has in the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the County and that the County hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any

other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the County, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA, Arizona Corporation Commission and the County, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, in the event that funds to match federal funds are not made available by the Corporation Commission, the County agrees to furnish and provide the State with County funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual, unless assumed by another competent governmental entity.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement may be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this contract.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Arizona Department of Transportation
Joint Project Administration
205 South 17 Avenue, Mail Drop 616E
Phoenix, AZ 85007

Gila County
County Administrator
1400 Ash Street
Globe, AZ 85501

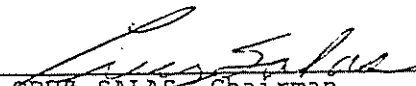
9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


GILA COUNTY, ARIZONA

STATE OF ARIZONA
Department of Transportation

By

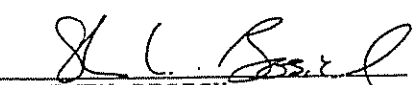

CRUZ SALAS, Chairman
Board of Supervisors

By


PETER L. ENO
Contract Administrator

ATTEST:

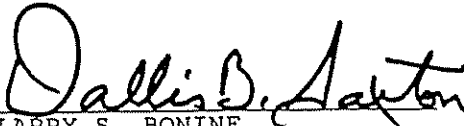
By


STEVEN BESICH
Clerk of the Board

RESOLUTION

BE IT RESOLVED on this 5th day of May 1997, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with Gila County for the purpose of defining responsibilities for the design, construction and maintenance of railroad crossing improvements at VanWinkle/New Street at the Arizona Eastern Railroad crossing.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


for LARRY S. BONINE
Director

BOARD OF SUPERVISORS
GILA COUNTY, ARIZONA

Date: March 17, 1998

CRUZ SALAS
Chairman

STEVEN L. BESICH
Clerk of the Board

RONALD A. CHRISTENSEN
Vice-Chairman

By: Marian Sheppard
Chief Deputy Clerk

EDWARD G. GUERRERO
Member

Sitting in: Globe, AZ
(Gila Cty. Courthouse)

PRESENT: Cruz Salas, Chairman; Ronald A. Christensen, Vice-Chairman; Edward G. Guerrero, Member; Steven L. Besich, County Administrator/Clerk; and Mark Gunning, Deputy County Attorney.

The Gila County Board of Supervisors met in Special Session this date. Ted Thayer led the Pledge of Allegiance and Ophelia James delivered the Invocation.

Upon motion by Supervisor Guerrero, seconded by Vice-Chairman Christensen, the Board unanimously approved the Finance Report of \$21,963.14 disbursed for County expenses by Claim Nos. X090980 through X091018 and X248361 through X249392, and paid during the period of March 10, 1998 through March 16, 1998, inclusive. Also approved for the same reporting period was the Finance Report of \$404,262.06 disbursed for County expenses by Claim Nos. X091020 through X091297 and X248395 through X248809.

At this time the Sheriff's Department Continuing Improvement Plan March 10-17, 1998 Weekly Progress Reports were distributed to the Board. For the record, a copy of these weekly reports are attached to today's minutes. Harry Cain, Undersheriff, presented an overview of Law Enforcement Services; Chuck Gatwood, Sheriff's Department Administrator, presented an overview of

Chairman Christensen, the Board unanimously approved Resolution No. 98-3-7.

Ms. Jonovich requested approval of an Agreement between Gila County's Community Services Division and the Pinal-Gila Council for Senior Citizens in the amount of \$3,500 (Title XX funds) for the period July 1, 1997 through June 30, 1998. Ms. Jonovich stated that this Agreement will provide evaporative cooler repairs for senior citizens. In the past, this service has been provided to senior citizens in the Globe-Miami area. The service area has been expanded to include Hayden, Winkelman, and Payson. Upon motion by Vice-Chairman Christensen, seconded by Supervisor Guerrero, the Board unanimously approved the Agreement.

The next item on the agenda was a request to accept a Citizen's Petition for the establishment of Jacqleen Drive in Tonto Basin as a County highway. John Trujillo, Engineering Services Director, requested that this item be tabled for further study and review. Upon motion by Supervisor Guerrero, seconded by Vice-Chairman Christensen, the Board unanimously tabled this agenda item.

Mr. Trujillo requested approval of an Intergovernmental Agreement between the State of Arizona Department of Transportation and Gila County for the construction of an AERR (Arizona Eastern Railway Company) crossing at Van Winkle/New Street. Mr. Trujillo stated that the State would provide the funding for this crossing; however, an outside firm would handle the actual design and construction of the crossing. The total project cost would be \$154,870 with \$2,653.00 being paid by Gila County. Mark Gunning identified to the Board certain language outlined in Section III - Miscellaneous Provisions of the Intergovernmental Agreement which refers to the liability of Gila County. John Trujillo stated that AERR has the responsibility to maintain the railroad crossing gates, signal, and any electrical problems, and Gila County has responsibility for ensuring that proper signs and striping are installed.

Discussion ensued between Mark Gunning and the Board regarding the liability issue. Upon motion by Supervisor Guerrero, seconded by Vice-Chairman Christensen, the Board unanimously approved the Intergovernmental Agreement.

Upon motion by Supervisor Guerrero, seconded by Vice-Chairman Christensen, the Board unanimously approved the Consent Agenda which consisted of minutes from the March 3, 1998 and March 10, 1998 meetings, and monthly departmental activity reports.

Upon motion by Supervisor Guerrero, seconded by Vice-Chairman Christensen, the Board unanimously agreed to adjourn and reconvene at 2:00 p.m. to address personnel issues.

There being nothing further to be brought before the Board, the meeting was adjourned.

/s/ CRUZ SALAS

Cruz Salas, Chairman

ATTEST:

/s/ STEVEN L. BESICH

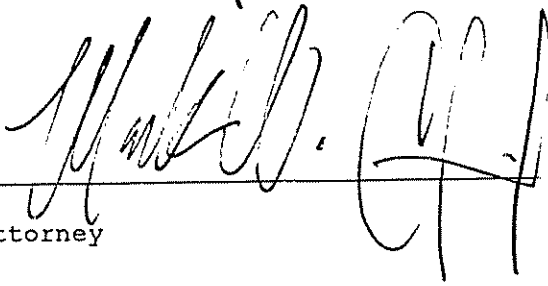
Steven L. Besich, County Administrator/Clerk

Enclosure: Gila County Sheriff's Office March 3-17, 1998 Weekly Progress Reports

APPROVAL OF THE GILA COUNTY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and GILA COUNTY and declare this agreement to be in proper form and within the powers and authority granted to the County under the laws of the State of Arizona.

DATED this 7 day of April, 1997.


County Attorney



GRANT WOODS
ATTORNEY GENERAL

STATE OF ARIZONA
OFFICE OF THE ATTORNEY GENERAL
1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680
Direct: (602) 542-8837
Fax: (602) 542-3646
MAIN PHONE : 542-5025
TELECOPIER : 542-4085

INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR97-0903TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATE April 13, 1998.

GRANT WOODS
Attorney General

JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/11710

Enc. .